

Nº. 50084-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON
Respondent,

v.

CINDY L. CAULFIELD,
Appellant.

OPENING BRIEF OF APPELLANT

Appeal from the Superior Court of Clark County,
Cause No. 15-1-00944-3
The Honorable Gregory Gonzalez, Presiding Judge

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A. ASSIGNMENTS OF ERROR

1. The trial court erred in denying Ms. Caulfield's motion to suppress all evidence discovered pursuant to her unlawful seizure by Deputy Shields.
2. Error is assigned to Finding of Fact for 3.6 Hearing on Defendant's Motion to Suppress Evidence Number 2 which states:

There was a traffic stop on May 15, 2015, in Clark County Washington, and subsequent seizure when Clark County Sheriff's Office (CCSO) Deputy Shields detained the defendant, Cindy Lou Caulfield. The traffic stop and detention took place on Smith Quarry Rd, near the driveway to the Foss residence.

3. The Court of Appeals should decline to impose appellate costs, should Respondent substantially prevail and request such costs.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Was it error for the trial court to deny Ms. Caulfield's motion to suppress where Deputy Shields lacked knowledge of facts sufficient to support an objectively reasonable belief that Ms. Caulfield was involved in criminal activity? (Assignments of Error Nos. 1 & 2)
2. If the state substantially prevails on appeal and makes a proper request for costs, should the Court of Appeals decline to impose appellate costs because Ms. Caulfield is indigent, as noted in the Order of Indigency? (Assignment of Error No. 3)

C. STATEMENT OF THE CASE

Factual and Procedural Background

Robert Foss has owned a residence on Smith Quarry Road in

Woodland, Washington, since late 2004.¹ The Foss family lives in the house five to ten months per year.²

In May of 2015, the Foss residence on Smith Quarry Road was the subject of a number of burglaries.³ On Friday, May 22, 2015, Mr. Foss' wife received a telephone call from the police informing her that the Smith Quarry Road residence had been broken into.⁴ Mr. Foss and his wife flew back to Washington on Saturday, May 23, and on Sunday, May 24, attempted to secure the Smith Quarry Road residence and conduct an inventory of things that had been taken.⁵ The Fosses spent Sunday night in a hotel in Vancouver.⁶

The Fosses returned to the Smith Quarry Road residence on the morning of Monday, May 25, and discovered a car parked in front of the house.⁷ Mr. Foss called the police who responded and arrested two men coming down the driveway to the Foss residence with a load of items taken from the Foss residence in their car.⁸ After the police arrested the men, Mr. Foss re-secured the residence and did a quick inventory of the residence and the shop on the property, then Mr. Foss drove to Vancouver

¹ CP 48.

² CP 48-49.

³ CP 49-50, 55.

⁴ CP 52, 70.

⁵ CP 49, 70-71.

⁶ CP 49, 72.

⁷ CP 72.

⁸ CP 50, 52-53, 72.

to rent a U-Haul truck with which to block the driveway.⁹ During the inventory, he noticed some lightbulbs in his shop and thought it was odd that the burglars took many other items but left the lightbulbs.¹⁰

Mr. Foss returned to the Smith Quarry Road residence between an hour and twenty and an hour and forty minutes after leaving, parked the U-Haul truck across his driveway, then drove to a Wal-Mart in Woodland to buy fluorescent paint to paint on his driveway that it was private property and that there was no trespassing allowed.¹¹

When the Fosses returned to the residence, there was a vehicle in the easement between Pacific Highway and Smith Quarry Road that Mr. Foss considers his driveway.¹² Mr. Foss did not check to see if anyone was in the vehicle and called the police, instead.¹³ The Foss residence is at the end of a 1800-2000 foot long driveway and the U-Haul truck was parked 6-8 car lengths from the entrance to the driveway.¹⁴

About 30 minutes after Mr. Foss called the police he noticed two women “appeared as if all of a sudden there was some activity in the car” and “it appeared as if they were going to take off.”¹⁵ Mr. Foss approached

⁹ CP 55-56.

¹⁰ CP 67-68.

¹¹ CP 56-57.

¹² CP 57, 60.

¹³ CP 61.

¹⁴ CP 13, 23, 29.

¹⁵ CP 61.

the vehicle and took a picture of the occupants.¹⁶ About the time Mr. Foss took the picture, the police showed up.¹⁷ Mr. Foss returned to his vehicle and waited for the police.¹⁸

Deputies Elithorpe and Shields, Sergeant Ladder, and possibly a Ridgefield police officer responded to the Foss residence.¹⁹ Deputy Shields arrived in the area of the Foss residence at about 8:21 p.m. while it was still light outside.²⁰ Deputy Elithorpe arrived at the scene about ten minutes after Deputy Shields.²¹

Upon arriving, Deputy Shields immediately contacted the occupants of the vehicle and handcuffed them.²² The driver was identified as Ms. Cindy Caulfield and the passenger was identified as Ms. Judy Masters.²³ Deputy Shields observed “obvious large bulky items” in the right pocket of Ms. Caulfield’s jacket, so Deputy Shields removed the items for officer safety.²⁴ Deputy Shields then put Ms. Caulfield in a different police vehicle than Ms. Masters.²⁵

The police asked Mr. Foss to look in Ms. Caulfield’s vehicle and

¹⁶ CP 61.

¹⁷ CP 61, 63.

¹⁸ CP 63-64.

¹⁹ CP 86.

²⁰ CP 97, 102.

²¹ CP 98.

²² CP 98, 102.

²³ CP 102.

²⁴ CP 102.

²⁵ CP 102.

see if he recognized anything in the vehicle as his property.²⁶ Mr. Foss observed lightbulbs he thought were similar to the lightbulbs he had noted in his shop earlier in the day.²⁷ Mr. Foss told the police that the lightbulbs might possibly belong to him.²⁸

The women told the police that they had stopped at the location to urinate.²⁹ The women denied have gone into the Foss residence or shop.³⁰ The police spent about 45 minutes looking around the area where the women said they had urinated and also looking around the house and the shop but found no indication of urination.³¹ It had been unusually warm and dry the whole year in that area.³² The police spent about 45 minutes looking around the house and the shop with flashlights.³³

Ms. Masters said that the women had bought the lightbulbs at Home Depot and Ms. Caulfield said that she had brought the lightbulbs with her from her home because she was moving.³⁴ Deputy Shields formally arrested both women for second-degree burglary for entering the shop and stealing the lightbulbs.³⁵

²⁶ CP 64.

²⁷ CP 64-65, 67-68.

²⁸ CP 77-78.

²⁹ CP 90, 103.

³⁰ CP 103.

³¹ CP 98, 103.

³² CP 90.

³³ CP 98.

³⁴ CP 103.

³⁵ CP 103.

Mr. Foss did not enter his shop and confirm the lightbulbs he remembered being in the shop were actually missing until Tuesday, May 26, the day after Ms. Caulfield was arrested.³⁶

During the booking process, a corrections officer located a baggie of methamphetamine in Ms. Caulfield's jacket.³⁷

On May 28, 2015, Ms. Caulfield was charged with burglary in the second degree and unlawful possession of a controlled substance (methamphetamine).³⁸

On July 9, 2015, Deputy Shields applied for and was granted a warrant to search Ms. Caulfield's vehicle.³⁹ The police searched Ms. Caulfield's vehicle on July 13, 2015 and found "crystal amphetamines" and "unknown drug paraphernalia."⁴⁰

On January 25, 2016, the State moved to dismiss the second-degree burglary charge because "evidentiary issues" existed and the trial court granted the motion.⁴¹

On June 7, 2016, Ms. Caulfield moved to suppress all evidence discovered pursuant to her arrest and pursuant to the search of her

³⁶ CP 78-79.

³⁷ CP 103.

³⁸ CP 5.

³⁹ CP 35-42.

⁴⁰ CP 44-45.

⁴¹ CP 23-24; RP 2-3, 1-25-2016. The report of proceedings is not paginated continuously between the volumes. Reference to the report of proceedings will be made by giving the page number followed by the date of the proceeding.

vehicle.⁴² Ms. Caulfield also argued that a *Franks*⁴³ hearing was necessary because Deputy Shields misstated and omitted critical information relative to the arrest of Ms. Caulfield and his request for a search warrant.⁴⁴

Argument on Ms. Caulfield's motion to suppress and motion for a *Franks* hearing was heard on December 9, 2016.⁴⁵ On December 13, 2016, the trial court denied both motions.⁴⁶ Findings of fact and conclusions of law regarding the motion to suppress were filed on December 27, 2016.⁴⁷

Ms. Caulfield waived her right to a jury trial and agreed to a stipulated facts bench trial.⁴⁸ The trial court reviewed the stipulated facts and found Ms. Caulfield guilty of possession of a controlled substance based on the baggie of methamphetamine found in her coat pocket.⁴⁹ The trial court did not enter findings of fact and conclusions of law following the bench trial pursuant to CrR 6.1(d).

On February 17, 2017, Ms. Caulfield brought an oral motion to reconsider the denial of Ms. Caulfield's motion to suppress and arrest the

⁴² CP 25-103.

⁴³ *Franks v. Delaware*, 438 U.S. 1354, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978).

⁴⁴ CP 25-103.

⁴⁵ RP 2-34, 12-9-2016.

⁴⁶ RP 2-9, 12-13-2016.

⁴⁷ CP 128-134.

⁴⁸ RP 19-27, 12-27-2016.

⁴⁹ RP 21-35, 12-27-2016.

judgment and set aside the guilty verdict based on insufficient evidence, and for a new trial.⁵⁰ The trial court denied the motions.⁵¹

Ms. Caulfield stipulated to her criminal history as calculated by the State.⁵²

Notice of Appeal was filed on March 10, 2017.⁵³

D. ARGUMENT

1. The trial court erred in denying Ms. Caulfield's motion to suppress where Deputy Shields seized her without knowledge of acts sufficient to support an objectively reasonable belief that she was involved in criminal conduct.

A. Standard of review.

This Court reviews the trial court's ruling on Defendant's Motion to Suppress evidence to determine whether substantial evidence supports the trial court's findings and whether its findings support its conclusions.⁵⁴ Substantial evidence exists only if the evidence in the record would persuade a fair-minded, rational person of the truth of the finding.⁵⁵ This Court reviews the trial court's legal conclusions de novo, including whether its findings of fact support its conclusions of law.⁵⁶

⁵⁰ RP 3, 2-17-2017.

⁵¹ RP 4-5, 2-17-2017.

⁵² CP 137-139; RP 8, 2-17-2017.

⁵³ CP 176.

⁵⁴ *State v. Cherry*, 191 Wn. App. 456, 464, 362 P.3d 313 (2015), *review denied*, 185 Wn.2d 1031 (2016).

⁵⁵ *State v. Atchley*, 142 Wn. App. 147, 154, 173 P.3d 323 (2007).

⁵⁶ *State v. Neeley*, 113 Wn. App. 100, 106, 52 P.3d 539 (2002).

B. *The seizure of Ms. Caulfield was unlawful because the facts known to Deputy Shields at the time he arrested Ms. Caulfield were insufficient to support a lawful seizure.*

i. Ms. Caulfield was seized when Deputy Shields stopped her vehicle.

The Fourth Amendment to the US Constitution provides,

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention, short of a traditional arrest.⁵⁷ A person is “seized” within the meaning of the Fourth Amendment only when, by means of physical force or a show of authority, his freedom of movement is restrained.⁵⁸ There is a “seizure” when, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.⁵⁹ This rule also applies to the stopping of an automobile and detention of its occupants.⁶⁰

Washington Constitution article I, section 7 states: “No

⁵⁷ *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 95 S.Ct. 2574, 2578, 45 L.Ed.2d 607 (1975); *Davis v. Mississippi*, 394 U.S. 721, 89 S.Ct. 1394, 22 L.Ed.2d 676 (1969).

⁵⁸ *United States v. Mendenhall*, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980); *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

⁵⁹ *State v. Mecham*, 186 Wn.2d 128, 137, 380 P.3d 414 (2016) (quoting *State v. Young*, 135 Wn.2d 498, 510, 957 P.2d 681 (1998)).

⁶⁰ *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979).

person shall be disturbed in his private affairs, or his home invaded, without authority of law.” This provision provides greater protection than the Fourth Amendment because it focuses on the disturbance of private affairs rather than focusing on unreasonable searches and seizures.⁶¹

“A seizure under article I, section 7 occurs when, due to an officer’s use of physical force or display of authority, an individual’s freedom of movement is restrained and the individual would not believe that he is free to leave or decline a request.”⁶² ““This determination is made by looking objectively at the actions of the law enforcement officer.””⁶³

Where police pull up near a vehicle and activate their emergency lights, the police have seized the occupants of the vehicle for Fourth Amendment purposes.⁶⁴

Ms. Caulfield was seized by Deputy Shields for purposes of both the Fourth Amendment and Article 1, § 7 when Deputy Shields stopped her car as she was trying to drive away. If this court does not consider the stopping of Ms. Caulfield’s vehicle to be a seizure of Ms. Caulfield, then Ms. Caulfield was certainly seized when Deputy Shields removed her from her vehicle and handcuffed her. Any person whose vehicle has been

⁶¹ *State v. Gantt*, 163 Wn.App.133, 138, 257 P.3d 682 (2011), citing *State v. Harrington*, 167 Wn.2d 656, 663, 222 P.3d 92 (2009).

⁶² *State v. Beito*, 147 Wn.App. 504, 508, 195 P.3d 1023 (2008).

⁶³ *Id.* (quoting *State v. Mote*, 129 Wn.App. 276, 282–83, 120 P.3d 596 (2005)).

⁶⁴ *State v. Stroud*, 30 Wn.App. 392, 396, 634 P.2d 316 (1981), *review denied* 96 Wn.2d 1025 (1982).

stopped by police and who has, even before they are identified by the police, been removed from their vehicle and handcuffed, would not feel free to decline to answer questions put to them by the police or feel free to leave.

ii. The seizure of Ms. Caulfield was not a “traffic stop.”

“Warrantless traffic stops are constitutional under article I, section 7 as investigative stops, but only if based upon at least a reasonable articulable suspicion of either criminal activity or a traffic infraction, and only if reasonably limited in scope.”⁶⁵

The trial court’s characterization of the seizure of Ms. Caulfield as a “traffic stop” in Finding of Fact for 3.6 Hearing on Defendant’s Motion to Suppress Evidence Number 2 is not supported by the evidence introduced at the suppression hearing. In a lawful traffic stop the police officer can contact the driver of the vehicle, ask for identification, and question the driver about his or her recent activity.⁶⁶ A lawful traffic stop does not include the driver of a vehicle being immediately removed from their vehicle, handcuffed, searched, and placed in a police vehicle. Immediately removing Ms. Caulfield from her vehicle and physically restraining her exceeded the lawful scope of a traffic stop and turned the

⁶⁵ *State v. Arreola*, 176 Wn.2d 284, 292–93, 290 P.3d 983, 988 (2012).

⁶⁶ *See State v. Glover*, 116 Wn.2d 509, 513, 806 P.2d 760 (1991).

contact into an unlawful seizure.

C. *The seizure of Ms. Caulfield was unlawful since Deputy Shields lacked knowledge of facts sufficient to support an objectively reasonable belief that Ms. Caulfield was engaged in criminal activity.*

When police officers have a “well-founded suspicion not amounting to probable cause” to arrest, they may nonetheless stop a suspected person, identify themselves, and ask that person for identification and an explanation of his or her activities.⁶⁷ A police officer may stop and detain a person for questioning **if** he reasonably suspects that the person is engaged in criminal activity.⁶⁸

An investigatory detention is a seizure.⁶⁹ To support an investigative detention, the circumstances must show there is a substantial possibility that criminal conduct has occurred or is about to occur.⁷⁰ In Washington, the officer must have a “well founded suspicion, based on objective facts, that the person is connected to potential or actual criminal activity.”⁷¹ Such facts are “judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search ‘warrant a [person] of reasonable caution in the belief’ that the action taken was appropriate?”⁷² The circumstances must be **more consistent**

⁶⁷ *State v. Glover*, 116 Wn.2d 509, 513, 806 P.2d 760 (1991).

⁶⁸ *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *State v. Williams*, 102 Wn.2d 733, 689 P.2d 1065 (1984).

⁶⁹ *State v. Rankin*, 151 Wn.2d 689, 695, 92 P.3d 202 (2004).

⁷⁰ *State v. Mendez*, 137 Wn.2d 208, 223, 970 P.2d 722 (1999), *abrogated on other grounds Brendlin v. California*, 551 U.S. 249, 127 S.Ct. 2400, 168 L.Ed.2d 132 (2007).

⁷¹ *State v. Kennedy*, 107 Wn.2d 1, 7, 726 P.2d 445 (1986).

⁷² *State v. Almanza-Guzman*, 94 Wn.App. 563, 566, 972 P.2d 468 (1999) (quoting *State v. Barber*, 118 Wn.2d 335, 343, 823 P.2d 1068 (1992)).

with criminal conduct than with innocent behavior.⁷³

To conduct a valid *Terry* stop, an officer must have “reasonable suspicion of criminal activity based on specific and articulable facts known to the officer at the inception of the stop.” To evaluate the reasonableness of the officer's suspicion, we look at the totality of the circumstances known to the officer. “The totality of circumstances includes the officer's training and experience, the location of the stop, the conduct of the person detained, the purpose of the stop, and the amount of physical intrusion on the suspect's liberty.” **The suspicion must be individualized to the person being stopped.**⁷⁴

A reviewing court decides whether reasonable suspicion existed based on an objective view of the known facts.⁷⁵ The reviewing court does not base its determination of reasonable suspicion upon the officer's subjective belief.⁷⁶

Even if it is considered to be a *Terry* stop, the seizure of Ms. Caulfield by Deputy Shields was unlawful. Deputy Shields was aware of no facts that would support an objectively reasonable belief that Ms. Caulfield or Ms. Masters was actually or potentially engaged in criminal activity. Ms. Caulfield may have been located in a semi-remote area near a home that had recently been repeatedly burglarized, but “Police cannot

⁷³ *State v. Pressley*, 64 Wn.App. 591, 596, 825 P.2d 749 (1992).

⁷⁴ *State v. Weyand*, 93377-4, 2017 WL 3138627, at *3 (internal citations omitted) (emphasis added).

⁷⁵ *State v. Mitchell*, 80 Wn.App. 143, 147, 906 P.2d 1013 (1995), *review denied* 129 Wn.2d 1019, 919 P.2d 600 (1996).

⁷⁶ *Mitchell*, 80 Wn.App. at 147, 906 P.2d 1013.

justify a suspicion of criminal conduct based only on a person's location in a high crime area.”⁷⁷

As far as Deputy Shield knew at the time he seized Ms. Caulfield, Ms. Caulfield’s reasons for being in that area were entirely innocent. She might have been sleeping, or urinating, or simply enjoying nature in a quiet spot. Deputy Shields had no individualized suspicions about Ms. Caulfield and the facts regarding Ms. Caulfield known to Deputy Shields were, at worst, equally consistent with innocent behavior as with criminal behavior. The seizure of Ms. Caulfield was unlawful because Deputy Shields lacked knowledge of facts sufficient to support an objectively reasonable belief that Ms. Caulfield was involved in criminal activity. Deputy Shields lacked knowledge of facts sufficient even for a *Terry* stop.

2. All evidence discovered pursuant to the seizure of Ms. Caulfield should have been suppressed.

When an unconstitutional search or seizure occurs, all subsequently uncovered evidence becomes fruit of the poisonous tree and must be suppressed. *State v. Kennedy*, 107 Wn.2d 1, 4, 726 P.2d 445 (1986). Under article I, section 7, suppression is constitutionally required. *State v. White*, 97 Wn.2d 92, 110–12, 640 P.2d 1061 (1982); *State v. Boland*, 115 Wn.2d 571, 582–83, 800 P.2d 1112 (1990). We affirm this rule today, noting our constitutionally mandated exclusionary rule “saves article 1, section 7 from becoming a meaningless promise.” [Citation omitted.] Exclusion provides a remedy for the citizen in question and saves the integrity of the judiciary by not tainting our

⁷⁷ *Weyand*, 93377-4, 2017 WL 3138627, at *6.

proceedings by illegally obtained evidence. *State v. Crawley*, 61 Wn.App. 29, 34–35, 808 P.2d 773 (1991).⁷⁸

As discussed above, Ms. Caulfield was clearly unlawfully seized by Deputy Shields. Accordingly, all evidence discovered pursuant to the seizure of Ms. Caulfield, including the methamphetamine found in her pocket when she was booked, should have been suppressed. The trial court erred in denying Ms. Caulfield’s motion to suppress.

3. If the state substantially prevails, the Court of Appeals should decline to award any appellate costs requested.

At this point in the appellate process, the Court of Appeals has yet to issue a decision terminating review. Neither the state nor the appellant can be characterized as the substantially prevailing party. Nonetheless, the Court of Appeals has indicated that indigent appellants must object in advance to any cost bill that might eventually be filed by the state, should it substantially prevail.⁷⁹

Appellate costs are “indisputably” discretionary in nature.⁸⁰ The concerns identified by the Supreme Court in *Blazina* apply with equal force to this court’s discretionary decisions on appellate costs.⁸¹ Furthermore, “[t]he future availability of a remission hearing in a trial

⁷⁸ *State v. Ladson*, 138 Wn.2d 343, 359-360, 979 P.2d 833 (1999); *see also Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

⁷⁹ *State v. Sinclair*, 192 Wn.App. 380, 385-394, 367 P.3d 612 (2016) *review denied*, 185 Wn.2d 1034 (2016).

⁸⁰ *Id.*, at 388.

⁸¹ *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015).

court cannot displace [the Court of Appeals'] obligation to exercise discretion when properly requested to do so.”⁸²

Ms. Caulfield has been convicted of a felony and sentenced to prison. The trial court determined that she is indigent for purposes of this appeal.⁸³ There is no reason to believe that status will change. The *Blazina* court indicated that courts should “seriously question” the ability of a person who meets the GR 34 standard for indigency to pay discretionary legal financial obligations.⁸⁴

If the state substantially prevails on this appeal, this court should exercise its discretion to deny any appellate costs requested.

E. CONCLUSION

For the reasons stated above, this court should vacate Ms. Caulfield’s conviction and remand for a retrial at which all evidence discovered pursuant to her arrest is suppressed.

DATED this 28th day of July, 2017.

Respectfully submitted,



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⁸² *Sinclair*, 192 Wn. App. at 388.

⁸³ CP 192-193.

⁸⁴ *Blazina*, 182 Wn.2d at 839, 344 P.3d 680.

CERTIFICATE OF SERVICE

Reed Speir hereby certifies under penalty of perjury under the laws of the State of Washington that on the 28th day of July, 2017, I delivered a true and correct copy of the Brief of Appellant to which this certificate is attached by United States Mail, to the following:

Clark County Prosecutor's Office
1013 Franklin Center
PO Box 5000, Vancouver WA 98666-5000

And to:

Cindy Lou Caulfield
625 E. Dogwood Avenue
La Center, WA 98649

Signed at Tacoma, Washington this 28th day of July, 2017.



Reed Speir, WSBA No. 36270

LAW OFFICE OF REED SPEIR

July 28, 2017 - 1:25 PM

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